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based upon indirectly affiliating circumstances.[81] It is hoped that the Supreme Court will soon confront this issue and will invalidate the use of the quasi in rem concept. Even if the concept continues to withstand attack, current due process standards of fair play suggest that quasi in rem jurisdiction should not be a sufficiently compelling state interest to override the requirements of prior notice and hearing.

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Postal Employees Are Not Protected From Garnishment

The doctrine of sovereign immunity no longer protects the wages of postal employees from garnishment. The traditional ban on garnishment on the grounds of immunity of the government from suit is no longer applicable to the United States Postal Service after the Postal Reorganization Act which created an independent federal agency amenable to suit.

In each of three district court cases, a garnishment summons directed to the United States Postal Service (USPS) to effect judgments in state courts was challenged by the federal government. The district court quashed the garnishment summons in each case on the basis that the USPS, as an independent establishment of the executive branch of the federal government performing a governmental function, was immune to suit. On appeal brought by the judgment creditors, the United States Court of Appeals for the Seventh Circuit *held*, reversed per curiam: The Postal Reorganization Act created an independent postal business and contains an implied Congressional waiver of governmental immunity thus subjecting the Postal Service to garnishment procedures to effect judgments in state courts. *Standard Oil Division, American Oil Co. v. Starks*, 528 F.2d 201 (7th Cir. 1975).

With the increasing role played by the federal government in our society and with the resulting increase in the number of public

81. Specific jurisdiction is the assertion of power to adjudicate, limited to matters arising out of or intimately related to affiliating circumstances on which the jurisdictional claim is based. The indirectly affiliating circumstances supporting jurisdiction have been categorized into (a) the continuous relationship of the defendant to the forum and (b) isolated events or transactions. *See* Von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1144-48 (1966).

employees,[1] cases pertaining to garnishment of federal governmental employees are of considerable interest. The decision in *Standard Oil* is of particular interest for it represents a reversal in the law of garnishment of postal employees.

Generally, under the doctrine of governmental immunity the United States cannot be sued without its consent.[2] This doctrine seems to have its historic roots in the early common law belief that "the King can do no wrong" since the king in feudal England was not subject to suit in his own court.[3] Sovereign immunity most likely originated as a power concept. Nobody had to provide a rationale for the serfs who understood royal prerogative full well. In this country the doctrine seems to have been carried over primarily because it is a convenient doctrine; it is much easier not to be sued than it is to defend.[4] Additional reasons have been found

> imbedded in our legal philosophy. They partake somewhat of dignity and decorum, somewhat of practical administration, somewhat of the political desirability of an impregnable legal citadel where government as distinct from its functionaries may operate undisturbed by the demands of litigants.[5]

This doctrine has been rationalized within a democratic government by both practical and policy reasons; its continued existence has been justified by alluding to the danger and inconvenience that would ensue from undue judicial intervention in the affairs of government.[6] It has been argued that the government must have flexibility and power in order to operate efficiently, and that only governmental immunity can assure that flexibility and power. In an early case where the United States Supreme Court attempted to justify reliance upon the doctrine, the Court emphasized this point:

> The principle is fundamental, applies to every sovereign power, and but for the protection which it affords, the government would be unable to perform the various duties for which it was created.[7]

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1. 1974 labor statistics place the number of federal civilian governmental employees at 2,874,000. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, HANDBOOK OF LABOR STATISTICS 1975—REFERENCE EDITION 119 (1975). For the fiscal year ending June 30, 1975, the total number of postal employees was 702,257. 1974-1975 ANN. REP. OF POSTMASTER GENERAL 53.

2. Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738 (1824).

3. W. PROSSER, HANDBOOK OF THE LAW OF TORTS 970 (4th ed. 1971).

4. Mikva, *Sovereign Immunity: In a Democracy the Emperor Has No Clothes*, 1966 U. ILL. L.F. 828, 846.

5. United States v. Shaw, 309 U.S. 495, 501 (1940).

6. *See* Lawyer, *Birth and Death of Governmental Immunity*, 15 CLEV.-MAR. L. REV. 529, 533 (1966).

7. Nichols v. United States, 74 U.S. (7 Wall.) 122, 126 (1869).

Governmental immunity seems to be well-suited for, and particularly convenient in, cases involving use of funds of the public treasury. Naturally, there is a strong policy rationale for protecting public funds. Wherever the judgment sought would expend itself on the public treasury, it has been construed as a suit against the sovereign.[8] Traditionally, wages of government employees have not been subject to garnishment because courts have considered the money sought to be garnished as still constituting a part of the public treasury and legally belonging to the government even though the employee may be entitled to a specific portion of it.[9] The immunity of the sovereign, then, has protected the United States Government from being summoned as a garnishee in any action without its consent.

This rigid doctrine has gradually been eroded and exceptions have been created—exceptions necessary in a democratic system to ensure that private citizens have some remedy when harmed by governmental conduct. Redress now may be secured in several ways: (1) a private person may sue a government officer as an individual if the officer exceeds his authority;[10] (2) under the Tucker Act, Congress has established federal liability for contracts;[11] (3) likewise, under the Federal Tort Claims Act[12] there is statutory liability for torts; (4) there are nonstatutory, nonmonetary remedies and nonremedies including habeas corpus, injunction, and mandamus;[13] and (5) in many areas of governmental activity, independent regulatory agenices operate with their own specific statutory review procedures.[14]

The exceptions do not cover all categories of suits. Therefore, the courts have had to look further in order to circumvent the rigid rule of governmental immunity and to enable citizens in a democratic system to obtain effective relief against their government. With the proliferation of governmental agencies since the New Deal legislation, courts have sought to find an intention to waive immunity when Congress set up the particular instrumentality. In *Keifer*

8. *E.g.*, Land v. Dollar, 330 U.S. 731 (1947).

9. Buchanan v. Alexander, 45 U.S. (4 How.) 20 (1846), established this early rule as a reason, in addition to the policy grounds, for protecting public funds.

10. *Ex parte* Young, 209 U.S. 123 (1908); Waller v. Professional Ins. Corp., 299 F.2d 193 (5th Cir. 1962).

11. 28 U.S.C. § 1346(a)(2), (1970).

12. 28 U.S.C. §§ 1291, 1346, 1402, 1504, 2110, 2401-02, 2411-12, 2671-80 (1970).

13. Cramton, *Nonstatutory Review of Federal Administrative Action: The Need for Statutory Reform of Sovereign Immunity, Subject Matter Jurisdiction and Parties Defendant*, 68 MICH. L. REV. 387, 394 (1970).

14. *Id.*

& *Keifer v. Reconstruction Finance Corp.*,[15] the United States Supreme Court established the rule that an instrumentality of the government can be set up as an independent corporation which does not automatically receive the immunity of the sovereign. In *FHA v. Burr*,[16] a garnishment proceeding against the housing agency, the Court held that garnishment proceedings could be filed against the federal agency by finding an implied legislative intent to waive immunity in the statutory authorization of the agency "to sue and be sued." A rule was established providing that in the absence of a contrary showing,

> it must be presumed that when Congress launched a governmental agency into the commercial world and endowed it with authority "to sue or be sued," that agency is not less amenable to judicial process than a private enterprise under like circumstances would be.[17]

Furthermore, the Court, in a third case, explicitly declared that "the mere fact that it is an agency of the government does not extend to it the immunity of the sovereign."[18]

The principles of these three cases are pivotal[19] to the Seventh Circuit's interpretation of the "sue and be sued" clause in the postal enabling statute.[20] Relying upon *Keifer*, the court found that Congressional inclusion of the clause in the statute indicated that there was legislative consideration of the applicability of sovereign im-

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15. 306 U.S. 381 (1939).

16. 309 U.S. 242 (1940).

17. *Id.* at 245. *But see* Chewning v. District of Columbia, 119 F.2d 459 (D.C. Cir.), *cert. denied*, 314 U.S. 639 (1941), holding that the District of Columbia, although a body corporate for municipal purposes, is immune to a garnishment proceeding because it is not a modern federal corporation launched into the commercial world in the context of *Burr*, and because it exercises many of the same governmental functions as do the states.

18. Reconstruction Fin. Corp. v. J.G. Menihan Corp., 312 U.S. 81, 83 (1941). The Court found nothing in the legislative history of the statute establishing the Reconstruction Finance Corporation to indicate that Congress intended that the "sue and be sued" clause should not subject the agency to the ordinary incidents of litigation. *But cf.* Small Business Administration v. McClellan, 364 U.S. 446 (1960), where the Court found the Small Business Administration entitled to the priority of the United States Government in a bankruptcy proceeding because it constituted an integral part of a governmental mechanism. Although the enabling statute of the Small Business Administration contained a "sue and be sued," clause (15 U.S.C. § 634(b)(1) (1970)) the Court in *McClellan* distinguished the decision in *J.G. Menihan Corp.* narrowly on its facts: The holding that the Corporation "could be assessed costs . . . [of a] suit it brought . . . . would not support a holding that the Small Business Administration is not the United States for the purpose of bankruptcy priority." 364 U.S. at 449.

19. The court declared that the three cases controlled. 528 F.2d at 202.

20. The Postal Reorganization Act of 1970. (Pub. L. No. 91-375, 84 Stat. 719), transformed the United States Post Office into the United States Postal Service. The enabling act gives the USPS the power "[t]o sue and be sued in its official name." 39 U.S.C. § 401(1) (1970).

munity to the independent agency. It was found not to be warranted. The conferral of the power to sue and be sued on the Postal Service by Congress constitutes an implied amenability to suit.[21] Moreover, Congress granted the USPS broad powers[22] to function and operate as an independent agency. This serves to reinforce the conclusion that Congress intended a waiver of immunity.[23] Furthermore, the enabling staute specifically carries out the purpose of the Postal Reorganization Act by disestablishing the Post Office Department, a Cabinet level executive agency, and establishing in its place the USPS, an independent establishment of the executive branch.[24]

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21. *See* Kennedy Elec. Co. v. USPS, 508 F.2d 954 (10th Cir. 1974), holding that the USPS was as amenable to suit as any private enterprise after finding no Congressional intent to constrict the "sue and be sued" clause.

22. 39 U.S.C. § 401 (1970) provides:

> The Postal Service shall have the following general powers:
>
> (1) To sue and be sued in its official name;
>
> (2) To adopt, amend, and repeal such rules and regulations as it deems necessary to accomplish the objectives of this title;
>
> (3) To enter into and perform contracts, execute instruments, and determine the character of, and necessity for, its expenditures;
>
> (4) To determine and keep its own system of accounts and the forms and contents of its contracts and other business documents, except as otherwise provided in this title;
>
> (5) To acquire, in any lawful manner, such personal or real property, or any interest therein, as it deems necessary or convenient in the transaction of its business; to hold, maintain, sell, lease, or otherwise dispose of such property or any interest therein; and to provide services in connection therewith and charges therefor;
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> (6) To construct, operate, lease and maintain buildings, facilities, equipment, and other improvements on any property owned or controlled by it, including, without limitation, any property or interest therein transferred to it under section 2002 of this title;
>
> (7) To accept gifts or donations of services or property, real or personal, as it deems, necessary or convenient in the transaction of its business;
>
> (8) To settle and compromise claims by or against it;
>
> (9) To exercise, in the name of the United States, the right of eminent domain for the furtherance of its official purposes; and to have the priority of the United States with respect to the payment of debts out of bankrupt, insolvent, and decedents' estates; and
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> (10) To have all other powers incidental, necessary, or appropriate to the carrying on of its functions or the exercise of its specific powers.

23. In addition, the court noted that the enabling statute (39 U.S.C. §§ 409(b), (c) (1970)) specifically provides for two exceptions to amenability to suit by requiring consent to suit in two instances: (1) procedural matters and (2) the applicability of the Federal Tort Claims Act which conclusively confirms the intention of waiver of immunity. 528 F.2d at 203.

24. 39 U.S.C. § 201 (1970). *See* Leonard v. USPS, 489 F.2d 814 (1st Cir. 1974) (USPS can independently settle one of its claims, contrary to the advice of the United States Attorney, because Congressional intent in setting up the USPS was to create an independent agency).

Therefore, the court found the USPS to be an independent agency conducting a commercial business within the meaning of *Burr* and subject to all types of litigation. In so doing, the court rejected the lower court's reliance upon two district court cases preserving governmental immunity for the USPS in garnishment proceedings: *Detroit Window Cleaners Local 139 Insurance Fund v. Griffin*[25] and *Lawhorn v. Lawhorn.*[26] In both cases the function of the Postal Service, to deliver the mail, was not viewed as essentially a commercial business transaction with the public. Instead, the courts determined that the Postal Service constituted an exception to the *Burr* doctrine because it was a "delegee of specific constitutional authority from Congress to perform an exclusively governmental function."[27] In disputing this contention, the Seventh Circuit argued that the USPS's operations are not exclusively governmental because many of its powers are common to all businesses,[28] and, most significantly, even the "delivery of mail itself is not inherently an operation that must be government-operated. . . ."[29] The court pointed out that mail delivery in the United States today is conducted by private services, such as the Private Postal System of America in Florida, as well as by the USPS.[30]

A second set of reasons given for preserving governmental immunity in garnishment proceedings, rejected in the instant case, is that to subject the USPS to garnishment for possible debts of all its employees would impose a "grave interference" with governmental functions,[31] or place an unnecessary burden on efficient and economical operation of the Postal Service.[32] These factors have been given significant weight in cases in which courts have recognized exceptions to the general rule of *Burr.* In order to come within the exceptions, however,

> it must be *clearly shown* that certain types of suits are not consistent with the statutory or constitutional scheme, that an implied restriction of the general authority is necessary to avoid *grave*

25. 345 F. Supp. 1343 (E.D. Mich. 1972).

26. 351 F. Supp. 1399 (S.D.W. Va. 1972).

27. 345 F. Supp. at 1345; *accord,* Nolan v. Woodruff, 68 F.R.D. 660 (D.D.C. 1975); Drs. Macht, Podore & Associates v. Girton, 392 F. Supp. 66 (S.D. Ohio 1975); Lawhorn v. Lawhorn, 351 F. Supp. 1399 (S.D.W. Va. 1972).

28. *See* 39 U.S.C. § 401 (1970).

29. 528 F.2d at 204. Congress is empowered "[t]o establish Post Offices. . . ." U.S. CONST. art. I, § 8.

30. 528 F.2d at 204.

31. Lawhorn v. Lawhorn, 351 F. Supp. 1399, 1400 (S.D.W. Va. 1972).

32. Detroit Window Cleaners Local 139 Ins. Fund v. Griffin, 345 F. Supp. 1343, 1344 (E.D. Mich. 1972); *accord,* Drs. Macht, Podore & Associates v. Girton, 392 F. Supp. 66 (S.D. Ohio 1975).

> *interference* with the performance of a governmental function, or that for other reasons it was *plainly* the purpose of Congress to use the "sue and be sued" clause in a narrow sense.[33]

In the instant case since there was no clear showing of interference or burden upon the delivery of mail,[34] the court held that the waiver of immunity should be liberally construed.[35]

As a final reason for rejecting governmental immunity for the USPS, the court noted the continued and widespread dissatisfaction with the doctrine itself.[36] The primary objection to the doctrine seems to be that it interferes with the ability of citizens to obtain effective relief against the United States and its instrumentalities "in the peaceable course of law."[37] The essential and sound policy underlying governmental immunity, that courts should not engage in undue intervention in the affairs of government, is not undermined when immunity is disallowed in garnishment suits against independent agencies.

The reasons this policy is not undermined are several. First, where an agency like the USPS is established as an independent commercial business, it should have both the powers and the responsibilities of a like private enterprise. Conferring broad immunity to suit upon the government (except for important reasons) is conducive to unjust results. Second, any public policy rationale of protecting the public funds should not extend to the situation where the funds are already committed to the employee. Since the USPS owed a duty to pay these funds to the employee, it is arguable that no undue burden results from a court order requiring that the money be paid a creditor instead. Third, although it may be desirable to disallow garnishment of wages of those governmental employees whose responsibilities are such that the pressure of creditors would involve the risk of interfering with or unduly burdening the government, the vast majority of positions occupied today by government

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33. FHA v. Burr, 309 U.S. 242, 245 (1940) (emphasis added) (footnote omitted).

34. A district court, in Colonial Bank v. Broussard, 403 F. Supp. 686 (E.D. La. 1975), reached a similar conclusion after finding that in order for a suit to fit within the exceptions it must present a " 'grave,' as opposed to 'appreciable,' interference with the operations of the Postal Service." *Id.* at 687. *See also* White v. Bloomberg, 501 F.2d 1379 (4th Cir. 1974), holding that payment by the USPS of post-judgment interest on its debt would not interfere with postal operations.

35. Keifer & Keifer v. Reconstruction Fin. Corp., 306 U.S. 381 (1939), established the principle that waivers by Congress of governmental immunity should be liberally construed.

36. 528 F.2d at 203. In 1939 the United States Supreme Court acknowledged the disfavor with the doctrine and gave this as one reason for applying a liberal construction to any implied waivers by Congress. Keifer & Keifer v. Reconstruction Fin. Corp., 306 U.S. 381, 391 (1939).

37. Cramton, *supra* note 13, at 389.

employees are not significantly different from jobs held by employees in the private sector. To disallow garnishment where there is no showing of significant intrusion on the administration of government is not supported by any justifiable public policy.

The decision in *Standard Oil* is sound jurisprudence. It recognizes the need for change in the application of a doctrine which yields incomplete and inadequate redress for a judgment creditor of a governmental employee. Since the only sound rationale existing today for the doctrine of governmental immunity to be applied in this type of garnishment proceeding, in a democratic society, is that the official activities of the government must be protected from undue or indiscriminate judicial interference,[38] there is no justification for reliance upon the doctrine in order to limit the effectiveness of garnishment proceedings upon employees of "independent" governmental agencies.

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38. *Id.* at 397.